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ABSTRACT

An important tool for establishing efficient total library service is contracting, which allows a unit of government or a library to obtain the use of the resources of another library according to its specific needs. A contract can cover services to be purchased, financial arrangements, administrative responsibilities, legal considerations, and the terms of the agreement. This handbook discusses the statutory basis for contracting by libraries, the forms of agreements, specific recommendations concerning contracts, and suggestions to be followed in developing contracts. As illustration, nine project suggestions are provided, with workable standard contracts. (Author/SL)

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COMPLETE INSTRUCTION AND PROJECT BOOK FOR

Contracting

"A LIBRARY COOPERATION TOOL"
BY WALTER H. RADCLIFFE AND
ROBERT E. KEMPER WITH A FOREWORD
BY RICHARD E. OSTRANDER

Nebraska Library Commission
Library "Know Series" No. 3.

Bailey Lewis & Associates, Publishers
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1972

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FOREWARD

Webster's Dictionary says...a contract is a binding agreement between two or more persons or parties. This simple word and equally simple definition cause more concern and dismay to librarians today than any other. Contractual obligations form the basis of our business, society and libraries in their function as service agencies.

We worry and struggle to understand and write up the "right" type of contract that will handle our particular problem and situation, and yet we are not too sure it was done as well as it might have been. We are usually very happy when the other concerned party draws up the contract for our mutual problem, yet we wonder...was it right?

The society we live in is built upon and exists on contractive agreements. Look at your own personal situation and think of the many personal contracts you are a party to from owning a new home to buying a car.

The Nebraska Library Commission's newest book is one of the best publications to concern Nebraskan librarians in some time. This is a **NOW** book because it's about what we are doing now. In the months ahead new contractual obligations in many of our areas of concern will have to be drawn up and set forth, new federal, state and local funds will be forthcoming, all based on some type of contractual obligation. How do we proceed? This book tells us how, when, and why. Chapter 3 is the Key and most important part of this book. In this chapter are listed nine project suggestions, or to be quite blunt (9) workable standard contracts that are, will, and have been used in our State and will continue to be used.

The authors have made the job easy and Pages 26 and 27 of their book lists types of contracts with good explanations of these contracts and their use: contracts between the library and the school district; between the library commission and any political subdivision, when library funds are being used: general employment contracts; termination agreements, etc.

We can't say this book is light reading, but is is written well and gets the message across. All references to Nebraska laws make for a clear understanding of the bases on which contracts are drawn up. The third book in the "Library Know Series" is sure to become a handy and valued reference tool to Nebraska libraries, as well as to other states interested in how to get this information set

Richard E. Ostrander
April 24, 1972

PREFACE

Maps to large urban cities are like runway lights at an international airfield; they direct you to where you think you are going. If the target isn't clear the destination doesn't get reached.

This book is about alternatives that are possible for expanding library service to people who presently are not served. This may be a matter of getting someone to do what he is supposed to be doing or what you would like him to be doing. The book describes the logic of expanding library services through contractual arrangements, as well as the "know how" procedure for developing a contract. It offers a series of project suggestions to help librarians, city, county, state, school, and academic officials and other library-oriented people determine what sort of solution might work.

If you have ever been asked or have said "What happens to the county's bookmobile service when the Library Services and Construction Act bookmobile demonstration ends?" or "I would like to see library services extended to our area without duplication of services which might already be available," this book will help.

R.E.K.
April 24, 1972

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CHAPTER I

INTRODUCTION

Libraries have always been gateways to the past. Now, they also are a key to the future. There are some excellent public, academic, and school libraries in this State and, of course, some very inadequate ones.[1] Of the 1,286 public schools operating in the State, 103 are one-teacher schools which, at best, receive no more than very minimal library service. If they are lucky, these schools are provided with minimal service from bookmobile programs. Approximately 232,000 school pupils, grades K-12, Class I, II, and III School Districts also receive only minimal library service. Larger school districts and academic institutions have libraries but their use is limited to a specific population. The people of Nebraska, some 1,500,000 of them, have a vested interest in all of the libraries of the State, yet some 12,000 of them have no library service whatsoever. Another 53,000 are served only by bookmobile demonstrations financed by federal funds. Another 704,771 have very minimal public library service. No single, very large, very well financed local library can take care of all of the needs of all the people of Nebraska. In light of these facts - and because of the technological and scientific knowledge explosion - integration of library goals, not just the connection of one large autonomous library to smaller autonomous units, whether regionally or statewide, has been proposed for Nebraska.

The working objectives of libraries are in close harmony with the highest aspirations of our society. However, it has become increasingly difficult for communities to make the financial effort necessary to maintain independent libraries that can meet today's demands. Part of the financial dilemma can be attributed to the "free library" syndrome. School officials, in particular, and librarians, in general, are apt to confuse accessability with support; that is, in extending library services to those who do not provide financial support, they lower the quality of services provided for those whose taxes make the library's existence possible. No community or institution can extend services across political, geographical, or institutional boundaries without increasing the costs to primary supporters. Extended services must be backed by additional funding.

Even if sufficient funds were available to develop outstanding independent libraries of all types and in all areas of Nebraska, such development would not represent the most efficient use of money or personnel. In order to achieve the basic objectives of library service for all Nebraskans, interlibrary cooperation has become a necessity. "Total library service for each Nebraskan" is a concept based upon the following assumptions:[2]

1. People have a right to library service which is readily accessible to them.
2. Effective library service is the means by which people make use of library resources; such service depends upon:
   a.) trained library personnel
   b.) sufficient funding to provide informational, recreational, educational, and cultural resources and modern equipment
   c.) support through efficient coordination of purchasing, processing and delivery of materials, convenient location of library centers, and meaningful access to materials
3. Cooperation and coordination of all library resources within the State will result in existing libraries and media centers providing better service.

A **1977 General Plan for Nebraska Libraries** will utilize the existing structure of public, school, and academic library service as a basis upon which to build a cultural, recreational, educational, and informational network which will provide Nebraska citizens with prompt access to library resources of the State. Improvement of library service depends upon a coordinated approach, among all types of libraries, and the development of new patterns of service where necessary.

Contracting

An important tool for establishing efficient total library service is contracting - the subject of this book. Contracting allows a unit of government or a library to obtain the use of the resources of another library according to its specific needs. A contract can cover services to be purchased, financial arrangements, administrative responsibilities, legal considerations, and the terms of the agreement. Contractual services offer flexibility and can be attached to the needs of each party involved. As a result, contracting promises to be an effective tool for cooperation in all governmental services.

There are two vital prerequisites in the legality of contracting:

1. The statutory right to establish a public library.
2. The statutory right to permit local governmental units to cooperate with other localities.

The remainder of this chapter will focus attention on these prerequisites. The remaining chapters will emphasize the form of agreements, specific recommendations concerning contracts, and suggestions to be followed in developing contractual services.

Statutory Authorization

It is necessary to examine the Nebraska Statutes (or those of your state) in order to determine who has the power to contract on behalf of a library and what exactly may be contracted.

Chapter 51, Article 2, of the Nebraska Statutes relates specifically to municipal libraries. Section 51-201, Reissue Revised Statutes of Nebraska, 1943, provides that the city council of any city, the board of trustees of any incorporated

village, and the electors of any township have the power to establish a public library. Any of these bodies may also contract for the use of a public library already established and may levy a tax of not more than three mills to pay for the use of such a library. A county board of any county also has the power to create a library and may levy a tax of not more than two mills. Thus, the statutes in their first section relating to libraries already set out one possible area of contractual obligation: that being between a city and an already established library to provide services.

> We know what you're thinking - you the librarian of the already first class library. You think that Robin Hood is going to take from the rich and give to the poor. No way! The philosophy is: an extension of library services to another governmental jurisdiction is done only if current library services are extended at no additional cost to the supporter of the existing library.

Later, we shall examine a project suggestion which will implement such a contractual obligation (see Project Suggestion I). Section 51-208 Reissue Revised Statutes of Nebraska, 1943, complements Section 51-201 in that it gives the library boards the power to contract back with a city for the utilization of existing library facilities. Before contracting with a library board, one should make certain that the library board is dually constituted. This can be done by checking its membership against the provisions of Section 51-202 Reissue Revised Statutes of Nebraska, 1943. This section sets forth the requirements for appointment to a city or village library board. Section 51-203 establishes requirements for a county or township library board.

In addition to contracts with cities and villages, library boards also may contract with schools for particular usage (see Project Suggestion III). The general powers of library boards to contract is set out in Section 51-211 of the Nebraska Statutes. It provides that a library board "shall have and exercise power as may be necessary to carry out the spirit and intent of Sections 51-201 to 51-219 and establishing and maintaining a public library and reading room". Section 51-207 also provides that any school district may at its annual meeting by a majority vote authorize the school board to contract for the use of a public library by the inhabitants of such district.

> We are sorry, Mr. Superintendent, but inadequate school collections in rural schools are very seldom caused by your public library and even less often by the State Library Commission. The financing of the basic school library collection is the school district's challenge - it is your job to see that financial resources are available. A regional library will be happy to provide services through contractual arrangements. What you support is what you get!

Article 3 of Section 51 relates to county and regional libraries.[3] Section 51-301 relates to the establishment of regional libraries. It provides for the agreement between several counties; the county boards thereof entering into a contract type arrangement to provide library services (see Project Suggestion II). Section 51-303 provides that any cities or villages which maintain a library in a county which has a county library system may opt by contract to become a member of that system. An agreement providing for such incorporation certainly would be beneficial so that the duties and expectations of all parties can be best understood (see Project Suggestion I). It is also necessary to make provisions for withdrawal by city or village from such a regional concept pursuant to Section 51-304 and 51-305 of the Nebraska Statutes.

County or regional library commissions have the power to contract in order that the services which they are to perform be performed.[4] The qualifications for the county or regional librarian are set out in Section 51-307. Because the county or regional librarian is the official representative of the Library Commission, he shall have the power to contract to carry out the purposes of the establishment of a library.

Chapter 51, Article 4, of the Nebraska Statutes relates to the Nebraska Library Commission. Section 51-403 details the powers and duties of the Library Commission. Section 51-408 states that it has the power to assist local libraries. Coupled with this power to assist would necessarily be the making of certain contracts to fulfill particular needs. Finally, Section 51-410 states that the Director of the Nebraska Library Commission has the power to make disbursements out of a fund appropriated for the Nebraska Library Commission. Any disbursements out of this fund which involve relationships with individuals not employed by the Commission would necessitate contractual obligation.

Interlocal Cooperation Act

Thus far we have established three primary library institutions which have the power to contract. The first is the **local or municipal library.** The second is the **county or regional facility.** The third is the **Nebraska Library Commission.** The primary thrust thus far has been related to contracts between various political subdivisions and the library. Before one can adequately consider any particular type of contracts in this regard, one must examine what is known as the **Interlocal Cooperation Act,** which is to be found in Chapter 23, Article 22 of the Nebraska Statutes. This act is reprinted in the appendix. However, its general provisions and relationships, specifically to library contractual obligations, are briefly discussed below.

The Interlocal Cooperation Act is designed to permit local governmental units to **better utilize** their powers by entering into cooperative agreements. Public agency, as defined in the act, means any county, city, village, school district or drainage district, any state agency or agency of the U.S. Government, or any adjacent political subdivision of another state.

Here is a tuffy---
Success on this one might entitle you to: (1) wear a Bob

Devaney medal with three orange-bowl clusters, (2) A Chinese ping-pong table with three barrels of United States ping-pong balls with pictures of President Nixon on them, (3) Two panda bears, (4) An autographed picture of Archie Bunker in Harlem standing on a soap box singing "We Shall Overcome", (5) All of the above, (6) None of the above.

The act states that any powers, privileges or authority which one or more public agency has may be exercised jointly. Thus, public agencies may enter into agreements as a result of appropriate action by the governing body of the agency. Any agreement which is entered into must contain:

1. The duration of the agreement.
2. The organization, composition and nature of any separate legal administrative entity and also set out its powers (not always applicable).[5]
3. The purpose.
4. The financing, establishment and maintenance of a budget.
5. Any partial or complete termination relative to the disposal of property.
6. Any other necessary matters.

In the contractual forms which will be set out later in this text, we will examine how these necessary requirements are met. It is important to remember that under this act **no agency** may relieve itself from **any duty** that it statutorally must perform.

Where does the buck stop? It stops here!

If an agreement deals in any way with "services of facilities" which are incumbent upon an officer or agency of the state government which has constitutional or statutory powers of control, the agreement must be submitted to that agency or officer for approval or disapproval. The contracting agency may appropriate any funds pursuant to their powers to fulfill the agreements made. This relates to the review which may be established to maintain libraries. In short, the act permits public agencies to contract, if they are so authorized by their governing body, to fulfill various governmental functions. The contract must "set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties."

---

1 Kemper, Robert E. **Planning to Plan; A Search for a 1977 General Plan for Nebraska Libraries.** Library Know Series No. 2 Bailey Lewis & Associates, 1972. p. 8.

2 Ibid. pp. 7-8

3 Ibid. pp. 81-87

4 Ibid. pp. 94-96

5 **Oregon State Library; Biennial Report for the Period July 1, 1966-June 30, 1968.** Salem, Oregon, 1968 (Unpaged section taken from "A Statement of Policy and an Affirmation of Beliefs").

THE CONTRACTUAL TOOL KIT -- THE TIE THAT BINDS

Agreements and contracts can prove to be valuable tools to the library which is fortunate enough to have someone who knows how to use them correctly. When used as prescribed and as needed, the agreements can save you many hours and many, many dollars. All that is needed in order to effect a contract is:

1. The written instrument or contract.
2. The obligor (one who makes a contract).
3. The obligee (one with whom a contract is made).
4. A good amount of foresight and innovation.

A CONTRACT IS an agreement, obligation, or legal tie, whereby a party binds himself, expressly or impliedly, to pay a sum of money or to perform or admit to do a certain act or thing. (McNally v. Ponce, 34 N.W. 2d 262, 150 Nebr. 267)

1. A LEGALLY BINDING OBLIGATION is created by a contract. This obligation must be made by parties who are capable of entering into such an agreement.

What do you mean, you already have a wife and seven children?

2. SUFFICIENT CONSIDERATION must support the legally binding obligation. The contract, at the time it is made, cannot be impossible to perform. Nor may it be adverse to basic principles of law or public policy.

3. AN OFFER to so conduct oneself must occur before one can agree to do something or refrain therefrom.

4. AN ACCEPTANCE must be tendered before a contract can be deemed enforceable. Acceptance consists of the giving of the requested return and the offeree's agreement to the proposed contract. It is imperative that acceptance conform to the terms of the offer. An unqualified acceptance will complete the contract. Such an acceptance may carry with it a request or suggestion.

ONCE AND FOR ALL, IN ORDER TO MANIFEST A CONTRACTUAL OBLIGATION, we must have parties who have the power to agree (e.g. not a minor); they must agree to perform something which is possible (e.g. one cannot agree to provide books or materials for 100 percent of a patron's actual needs); and the thing agreed upon cannot violate the law or public policy (e.g. the public availability of illegally obtained material). In addition, there must be an offer to award a certain performance and there must be acceptance of that offer. With these basic concepts in mind, we can begin to examine particular situations which may arise with some regularity.

EXHIBIT 1

CONTRACT

Capable Parties

Between Lane County, hereinafter referred to as "Lane County," and the State of Oregon, acting by and through the State Board of Higher Education on behalf of the University of Oregon, hereinafter referred to as "University".

Offer

WHEREAS, Lane County has undertaken certain studies and actions for the purpose of expanding and improving library service in Lane County, Oregon, and

WHEREAS, the accomplishment of strategic planning for library development will require organizational policy, facilities, personnel and budget requirements not presently available, and

WHEREAS, the University of Oregon acting through its Library Research and Information Center has the facility for preparing the needed Plan, therefore

It is hereby agreed that the University of Oregon will furnish the services of Dr. Robert E. Kemper who will act as consultant to Lane County and its Citizens' Advisory Committee in the following matters:

the performance of something possible

1. Recommend goals for Lane County library service.
2. Draft alternate proposals for a county-wide library system which will include organizational, facility, personnel and budget requirements.
3. Meet and work with librarians, county, city and school officials and the general public of Lane County for basic understanding of a county library system.
4. Prepare a final plan for a county library system as approved by the Citizens' Advisory Committee and the Board of County Commissioners and assist in the preparation of a ballot measure no later than December 15th, 1969.

It is further agreed that Lane County will:

Consideration

1. Furnish advice and consultation to the consultant during the planning period.
2. Appoint a lay citizens group which will have regular report sessions during the development of the plan and which will spearhead the public educational program prior to the election.
3. Upon submission of proper accounting records based upon the attached budget estimate, pay an amount not in excess of $7,500.00.

Acceptance

Dated this _____ day of _____, 1969

LANE COUNTY, OREGON

By: _____
Commissioner

_____
Commissioner

_____
Commissioner

STATE OF OREGON ACTING BY AND THROUGH THE STATE BOARD OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF OREGON

By _____
Freeman Holmer, Vice Chancellor for Administration

By _____
R. L. Collins, Secretary

14 The most common problem arising in contract law occurs when the parties each believe that the contract means something different. Several factors can create this state of affairs. The contract may be **ambiguous**, there may be a **misunderstanding** as to what its construction is, or there may be a clear cut **mistake** in the actual contract.

Ambiguous Statements

When a contract is ambiguous, it is operable only if both parties agree to the same meaning which is imported by it. Otherwise, it is void and unenforceable. A contract would be ambiguous if one of the parties agreed for example to "promote and foster the diffusion of knowledge among the people through the establishment, improvement, and expansion of free local library resources and services in communities to citizens without local library facilities".

A perfectly clear offer which is set out in writing is acceptable as to contractual form even if one misunderstands it. This is contingent upon the fact that it was through negligence that one failed to inform himself as to the content of the contract.

Mistake in Transmission

If there is a mistake in the transmission of a contract, it is then void. This means that if the wrong amount is stated, or the wrong completion date set forth it is void. Any mistake would void the contract. If, however, the mistake is mutual the formation of the contract is not affected.

Equal Treatment and Intent

There is an attempt through the foregoing rules to treat everyone equally and to manifest the intent of the parties involved. The most important consideration in the determination as to how a contract is to be interpreted is the intent of the parties. The courts will do everything within their power to ascertain the meaning each party attached to the contract.

In determining the intent of the parties to a contract, the courts must consider whether or not there has been any modification of the original agreement. If there has been modification and if there is proof as to mutual agreement relative to that modification, the modified contract is the one which will be deemed operable and enforceable. However, if there is not sufficient proof to indicate a modification or if only one party believed that the contract was so modified, the courts will not give effect to the modified contract. The law presumes that any person who makes a contract understands its meaning and effect and that he has the intention which its terms manifest. **(Frentzel v. Seibrandt,** 73 N.W. 2d 652, 161 Nebr. 505). In construing a contract, the courts must give effect and consideration to all provisions contained therein. A contract includes not only the terms set forth in expressed words, but in addition all implied provisions indispensable to effectuate the intention of the parties and carry out

the contract and in absence of which the contract could not be effectively performed. (**Watson Bros. Trans. Co. v. Jaffa,** 143 F.2d 340). In construing the intent or in deciding the question as to whether or not there is a contract, one must remember that a contract is not effectuated until both parties believe that there is such an agreement. This relates to the mutuality of intent of both parties. In short, the law will not make a contract when the parties intended none to exist, nor will it regard any type of arrangement as being complete when the parties to that arrangement regard it incomplete.

Delegation of Duty

It has often been said that the mark of a true administrator is his ability to delegate responsibility. Such delegation is also possible in the contract area. Delegation and assignment simply means that one of the parties to the contract either delegates or assigns his duties or performance to another individual to be completed by him. Such an arrangement must be accepted by the other party in most instances. For example, if a bookmobile has contracted to make an hour stop every other Tuesday at a rural school building at a cost of $2.50 per mile, the Nebraska Library Commission who was to make the stop may delegate the duty of delivery to the Hastings Public Library so long as the bookmobile service is given at the same price and time.

However, if the contract relates to personal services, or in other words something which is to be performed by the individual contracted with, for example, the services of a particular library building consultant, delegation or assignment would be unacceptable and thus void the contractual obligation and create a breach on the part of the individual who attempted the assignment or delegation thereof. For example, if Robert Kemper was to deliver 100 copies of the **South Sioux City Public Library Building Program** to the South Sioux City City Council and he arranged for Rod Wagner to make the Study and delivery and Rod did not, Robert would be responsible (liable).

The above example illustrates that it is extremely important to remember that assignment or delegation of one's duties will not alleviate one of the ultimate responsibilities in regard to the performance of a contract. This simply means that the original obligor on a contract, unless specific provisions are made to the contrary, is the individual who is responsible for the performance of the contract, notwithstanding the delegation or assignment of any powers and duties. An individual who has money or something of value due him as the result of the performance of a contract may assign the proceeds which are to be derived from the fulfillment of that contract through another individual.

Often a contract is drafted with the accomplishment of a long range goal in mind. Many times one may not desire to put many specifics in a contract even though they are essential to the fulfillment of the ultimate objectives. Attachments to the contract can serve to clarify and make more definite the actual process to be utilized.

A clause may be added to a contract which in effect states that the provisions of the contract shall be implemented in accord with the attachments (see page 10, item no. 3, under "Lane County will...."). This will aid all parties in the total implementation of the contract.

A general contract provision in regard to the consideration to be paid the party who is executing the contract may state that he is to receive "X" dollars (see page 10, item no. 3, under "Lane County will..."). In an attachment one may desire to break this amount down into such items as salaries and wages, equipment, travel, contractual or consulting services or any other anticipated expenses. Exhibit II is an example of a budget attachment and was included with the contract illustrated in Exhibit I page 13.

Another helpful guideline may be the development of a time schedule on a step-by-step basis. An attachment is included in Exhibit III pages 18 - 22. The time series briefly describes the events, target dates, responsibilities and activities to be followed. You will note that only the final target date corresponds to the date included in the contract (see Exhibit I). An attachment in the nature of a time table will be very beneficial for final implementation of a long term project. It will permit a staged development and thereby one of the contracting parties will know what is expected of him and the other will be able to follow the development of the services for which he is paying. The advantage of an attachment as opposed to putting the provisions in the contract permit a simple contract to bind the parties and an attachment spelling out specific obligations.

It is important to remember that the contract must contain the essential elements previously discussed. Attachments cannot take the place of the original contract.

EXHIBIT 2

BUDGET ESTIMATE

Personnel		
Dr. Robert E. Kemper - 3 mos. FTE @ $1325 (August-December 15, 1969 (based on University of Oregon salary rate)		$3975.
Secretary - 3 mos. half time @ $342 per mo. (full time) (based on University of Oregon Secretary II rate)		513.
	Subtotal	$4488.
Salary and Wage Assessment 9% of I above		404.
Travel (consultant)		250.
Travel (reimbursement to librarians, etc. traveling to group meetings)		750.
Supplies and Materials		100.
Telephone		25.
Final Report		125.
	Subtotal	$1654.
University overhead @ 20%		$1228.
	TOTAL	$7370.

EXHIBIT III

LANE COUNTY LIBRARY PROGRAM
SUMMARY OF PLANNING PROGRAM
(September 10, 1969)

EVENT	DESCRIPTION	DATE STARTED	TARGET DATE	RESPONSIBILITY	ACTIVITY
1	ORGANIZE STRATEGIC PLANNING GROUP Selection Orientation	7/69	9/10/69	Lane County Commissioners Robert Elfers	Personal contacts
2	ESTABLISH GOALS FOR LANE COUNTY LIBRARY PROGRAM	9/4/69	9/18/69	Lane County Library Advisory Committee	Evaluate background factors and existing studies concerning library-patron relationships in Lane County.
3	EXAMINE THE LIBRARY ENVIRONMENT Resources Outlets Services Patron-Relationships Leadership (Librarians and Library Boards)	8/15/69	11/25/69	Kemper	Evaluate existing information Individual & Group Discussions with Librarians
4	EXAMINE EDUCATIONAL ENVIRONMENT ORGANIZATIONAL	9/18/69	11/19/69	Kemper	Evaluate existing documents Individual & Group Discus-

	STRUCTURES POLICIES RESOURCES Financial Human Material Natural Facilities LEADERSHIP School Officials & Boards				sions with Educational Administrators (U of O; LCC; Sch. Dist.)
5	EXAMINE GOVERNMENTAL ENVIRONMENT ORGANIZATIONAL STRUCTURES LAWS RESOURCES Financial, Human Material, Natural Facilities LEADERSHIP City and County Officials & Boards	9/18/69	11/25/69	Kemper	Evaluate Existing Documents Individual & Group Discussions with government Administrators (Lane County; State; Municipalities; Unincorporated Areas)

EVENT	DESCRIPTION	DATE STARTED	TARGET DATE	RESPONSIBILITY	ACTIVITY
6	DETERMINE NEEDS OF LIBRARY PATRONS AND NEEDS FOR LIBRARY OUTLETS Role of existing libraries Role of County libraries Facility Personnel Capital, Equipment Material Selection Policies	9/26/69	11/28/69	Kemper L.C.L.A.C	Analysis of collected information
7	DEVELOP LIBRARY RESOURCE COST PROJECTIONS	9/18/69	11/14/69	Kemper & Staff	Series of projections based on past trends
8	DETERMINE ALTERNATIVES FOR LANE COUNTY LIBRARY PROGRAM	10/1/69	11/26/69	Kemper	Analysis of collected information and discussions with librarians, city officials, educational officials, and so forth.
9	EVALUATE ALTERNATIVES FOR LANE COUNTY LIBRARY PROGRAM	10/17/69	12/1/69	Kemper L.C.L.A.C.	Analysis of collected information and discussions with Lane County commissioners

10	DECIDE ON ALTERNATIVE TO LANE COUNTY LIBRARY PROGRAM	11/3/69	12/5/69	Kemper L.C.L.A.C.	Analysis of collected information with Lane County Commissioners
11	ESTABLISH SPECIFIC OBJECTIVES AND TARGET DATES OF IMPLEMENTATION	12/5/69	12/10/69	Kemper	Analysis of collected information
12	WRITE THE STRATEGIC PLAN FOR LANE COUNTY LIBRARY PROGRAM Goals; Resources; Specific Objectives; and Policies to Govern Acquisition; Use, and Disposition of these Resources.	12/5/69	12/10/69	Kemper	Written program
13	GAIN FINAL APPROVAL	12/10/69	12/15/69	Kemper L.C.L.A.C.	Individual and group discussions with Lane County Commissioners for purposes of gaining approval of the plan.
14	PREPARE BALLOT MEASURE	12/11/69	12/15/69	Kemper Eaton	Written measure to be approved by the Lane County Commissioners
15	SUBMIT MEASURE TO LANE COUNTY VOTERS	N/A	5/20/70	Lane County Commissioners	Vote in Regular Primary Election

LANE COUNTY LIBRARY PROGRAM
PLANNING TARGETS AND TARGET DATES
(September 10, 1969)

Dr. Robert E. Kemper
Consultant

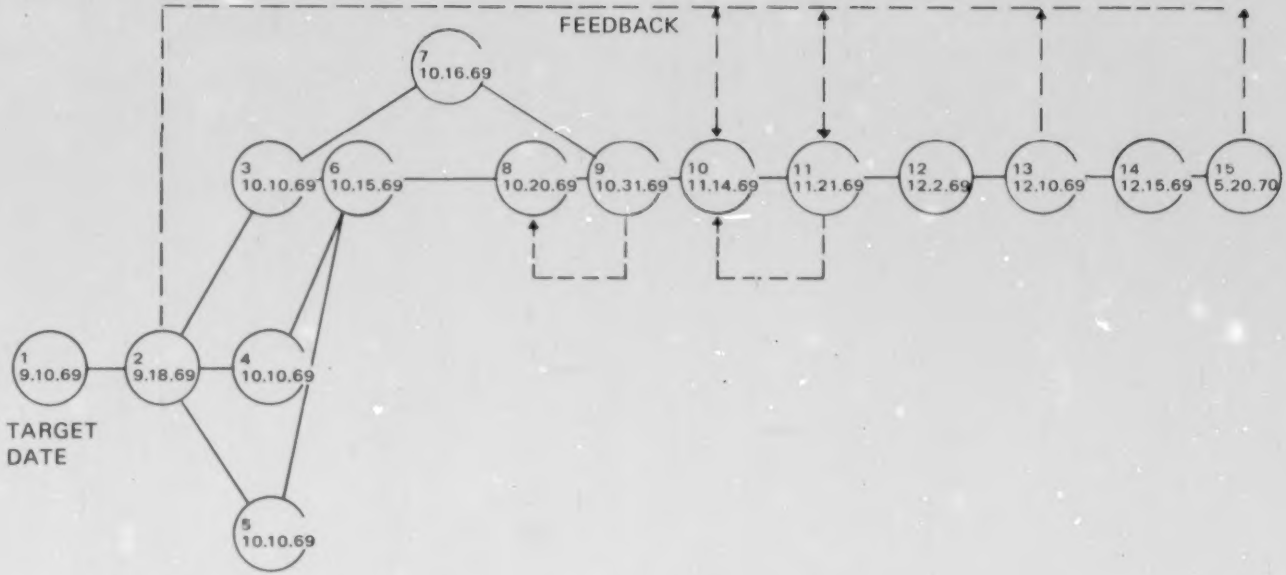


EXHIBIT III A

Breach of contract occurs when one of the contracting parties does not fulfill his obligation under the agreement. A breach may generally be defined as "unjustified failure to perform".

Defining a breach as unjustifiable failure to perform opens the question as to what constitutes justifiable nonperformance. The only type of justifiable breach is either impossibility of performance or an exculpation clause witnin the contract itself.

Exculpation Clause

An example of such a clause may be found in Project Suggestion V which states that the agreement is void if federal funds are not made available. Project Suggestion V also provides one with another example of such a clause relative to the cancellation of a contract for a long term service. Usually such a cancellation provision provides for the payment of such services up until the time the contract is cancelled. Thus, we see that one possible method of relieving oneself from a contractual obligation is by writing a provision into the contract to that effect. In this manner a breach will not occur.

Impossibility of Performance

As mentioned above, impossibility of performance is the only other excuse for a contractual breach. Impossibility basically means just that - that the contract is impossible to perform. The occasion which gives rise to the impossibility of performance must be one that was unforeseeable and therefore uninsurable. An "act of God" is the most common example of impossibility. An act of God is defined in Black's Law Dictionary as "an act occasioned exclusively by violence of nature without the interference of any human agency. It means a natural necessity proceeding from physical causes alone without the intervention of man. It is an act, event, happening, occurrence, or disaster due to natural causes and inevitable necessity which implies entire exclusion of all human agency which operates without interference or aid from man, and which results from natural causes and is in no sense attributable to a human agency. It is an accident which could not have been occasioned by human agency but proceeded from physical causes alone". **(Short v. Kerr**, 104 Ind. Appellant 118, 9 N.E. 2d 114 at page 118) Black's Law Dictionary further defines an act of God as "any misadventure or casualty is said to be caused by the act of God when it happens by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, or by the aid of any appliances which the situation of the party might reasonably require them to use".

Inevitable Accident or Casualty

An inevitable accident is one produced by physical cause which is irresistible; such as lightning, flash flood, tornado, hail storm, flood, high wind, blizzard, or earthquake. The sudden illness or death of persons is considered an inevitable casualty. (**People v.Tubbs,** 37 N.Y. 586; **Central Georgia Railway Company v. Hull,** 124 Ga. 322, 52 S.E. 679)

An example of what would not be considered an impossibility of performance under the foregoing definition would be the loss by water damage to library catalog cards which were to be delivered. This basic possibility of losing the catalog cards through water damage could be foreseeable by the experienced librarian with reasonable knowledge in the library field. He therefore should have insured against such possible loss.

There are two types of impossibility of performance. They are **total** and **partial.** In other words, impossibility of performance may not be complete. By this we mean that a certain part of the contract could be performed and must be performed.

The Anglo-American system of law has always provided individuals with a remedy against one who breaches a contract. Such a remedy may be exercised in two ways. Money damages may be sought for the harm caused as the result of the breach or "specific performance" may be sought to have the contract fulfilled.

Money damages seek to reinstate the individual against whom the breach occurred and put him in a position similar to that in which he would have been had the contract been performed. The difficulty in litigating for money damages is the problem of proving exactly what it is that would have been lost or what actually was lost. The common law established the rule that no one can be held liable for a contract breach for any damages which were not reasonably foreseeable. **(Handley v. Baxendale)**

This ancient English case illustrates the point that no one can be held for damages which are not foreseeable. In this instance, a contract had been entered into to provide for the repairing of a mill shaft by a particular date. The shaft was not repaired by that date and exorbitant damages were sought which reflected the entire loss of trade as a result of not having the mill shaft at the place of business. The English justices ruled that the liability only went to what was reasonable foreseeable - that being the cost of the mill shaft. This ruling basically holds that one is not responsible for all of the ramifications resulting from a contractual breach. One is usually reasonable successful in obtaining money damages as a result of a breach.

When personal services are contracted for, the courts are very reluctant to compel an individual to actually perform the services for which he contracted if he does not so desire. When a stalemate is reached one can sue for monetary damages resulting from the loss of services of that particular individual. This type of a situation might arise if a library were to enter into a contract for per-

sonal services similar to that which is expressed in Project Suggestion VII. Unless an individual has enough wealth to compensate for a contractual breach which he might make, there is no way to physically compel him through the courts to fulfill his end of the contract.

From the foregoing, one can see that contracts certainly do offer a good deal of security in regard to the establishment of a working relationship. However, when a contract is breached it is often difficult and indeed sometimes impossible to recover fully for the loss which was incurred.

Ramifications and Resulting Contractual Obligations

In our discussion relevant to contractual breaches, we touched upon the possible ramifications of entering into a written contract. A contract basically is a promise between individuals that certain things will be done and that consideration will be given for the doing of those specific acts. It is a written enunciation of an agreement between individuals.

Bonding

It is important to remember that when one enters into a contract, **he is indeed binding himself to some type of performance.** Because of the tie which is created, one may be sued for breach of contract if the performance does not occur. This is why it is important for public officers and public servants to be bonded or insured in the case of a suit for breach of contract. Insuring oneself is certainly better protection than bonding. Being bonded only means that a bonding company will pay your debtor that which he has due. The bonding company may still come back against the individual who was bonded. Insurance, if obtainable, certainly provides better protection in that there is no course by the insurance company against the insured unless fraud or malfeasance can be proved.

Written Contracts

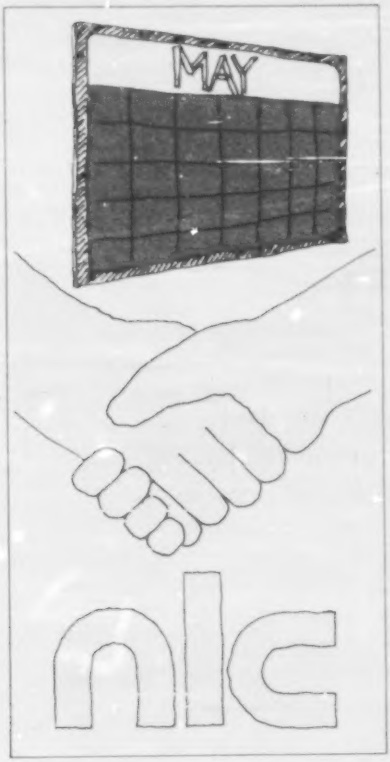
Some individuals may wonder why it is necessary to go to the trouble to establish written contracts. Certainly a man's word is his bond. However, in many instances it is not exactly understood between individuals as to what it is that should be performed. A contract certainly aids immensely in the enunciation of specific duties. In addition, it does give individuals a cause of action if they have indeed promised to do something, have done it, and have not been compensated for their services.

PROJECT SUGGESTIONS

As was discussed in the Introduction, there are several areas in which libraries can involve themselves contractually. The authority to do so comes from statutes relating specifically to the administration of libraries (Chapter 51) and the Inter-local Cooperation Act.

Following is a list of nine specific project suggestions which may be undertaken in accordance with the laws of the State. The type of arrangement established is detailed in the project suggestion description. The use of the particular suggestion may be implemented through the completion of the project suggestion form. Each form has with it an explanation as to how it can best be used.

The project suggestions are:



Project Suggestion I
Agreement between a city, village, or county and an existing library facility (university, college, library commission, city library).

Project Suggestion II
Agreement between counties for the establishment of a library facility.

Project Suggestion III
Termination agreement.

Project Suggestion IV
Library use agreement with school district.

Project Suggestion V
Agreements for the State Library Commission and any political subdivisions when Library Commission funds are being utilized.

Project Suggestion VI
Agreement for the Library Commission and/or any library within the State and another concern interested in utilizing library services (S.U.N. - State University of Nebraska).

Project Suggestion VII
Agreement for the Library Commission and/or any other library within the State and an individual or cooperation for services relative to a particular project.

Project Suggestion VIII
Librarian employment contract.

Project Suggestion IX
General employment contract.

Most projects that a library administrator is contemplating entering will be included within the parameters of the nine various forms. Therefore, the first thing one should do is to examine the topics of the forms and determine which particular forms should be utilized. The short explanation after each of the forms will permit one to decide which is applicable to the particular situation in which you are interested.

After a particular form has been chosen, it should be read with care so that it may be determined what the proper additions are for the blank spaces on the form. In most cases, a simple retyping of the form from the text and the filling in of the appropriate blanks and the proper signatures will be sufficient. The library may want to contact legal counsel or the city attorney to make sure that the form is acceptable.

It is important to remember that on forms calling for the performance of particular services there are often a number of services which may be performed, all of which might not be applicable in a particular situation. The contract provides that the contracting party shall initial which particular services are to be utilized. In the various employment contracts where there is a blank space relating to the development and explanation of the services which are to be performed, one need not worry about precise legal language. All that is necessary is to **write as simply and concisely as possible** that which is to be done. As mentioned previously, it is the intent of the parties which truly determines how a contract is to be interpreted.

In contracts involving two political subdivisions, it is extremely important that the material set forth in the various contractual forms be followed strictly. This is necessitated as a result of the Interlocal Cooperation Act which was explained previously in the text and is set out in the Appendix. There are several basic provisions which must be included in any contract between political subdivisions as a result of the Interlocal Cooperation Act. The proper wording and provisions are included in the form contracts.

Although it is not required by law, it is certainly a good idea to have witnesses to contracts so that signatures may be verified. It is not necessary to have contracts notarized, for witnesses can attest to the state of the parties who entered into the contract and to the authenticity of a signature if this is ever necessitated.

In the utilization of the forms provided in this text, it is important to remember that most of the language in the contracts is there because it is required by law. The only material that is not necessary in all contracts is that which relates to services which must be performed. In dealing with this area, some liberty may be taken as to what should be placed in the contracts.

Project Suggestion I relates to the utilization of the use of an existing library facility by city, village or county. There is a provision that the library is to be compensated a certain amount of money each year for the use of such a facility. This particular amount will have to be agreed upon by the contracting parties. There is also a provision relating to what services shall be performed by the library. Those which are applicable should be initialed by the contracting parties. This is not intended to be an exclusive list and more duties may be added or some eliminated. The duration of the contract is intended to be perpetual. However, there must be a provision for termination. The requirement for notice of termination shall be agreed upon by the contracting parties (see Project Suggestion III, Termination Agreement). In considering what would be fair and adequate notice, consideration must be given to the funding which is to be provided and the impact that the loss of such funding will have upon the contracting library. The purpose of the contract is stated broadly in that it is to provide improved and comprehensive library services for the city, village, or county contracting with the library. The financing of the agreement is contemplated to be achieved by the implementation of a levy not to exceed three mills for a city and two mills for a county in accordance with Section 51-201 and Section 51-316, Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement. If the agreement is terminated, property acquired by funds provided by the city, village or county shall be returned to that city, village or county in proportion to the amount of funds that they provided for the acquisition of such property. **This contract should only be utilized when a city, village or county wishes to acquire the services of an already existing library facility.**

PROJECT SUGGESTION I

Agreement between city, village, or county and an existing library facility

THIS AGREEMENT, made and executed this_____day of _____, 19__by and between the (city, village, or county) of_____, hereinafter referred to as the party of the first part and_____Library (Board or Commission) herein after referred to as the party of the second part is in accordance with Chapter 51, Article 2 Reissue Revised Statutes of Nebraska, 1943. The purpose of this agreement is to provide for the utilization of_____ Library by the party of the first part, to detail services to be performed and to establish adequate compensation for the use of such facilities.

TO WIT:

The party of the first part agrees to compensate the party of the second part in the amount of_____dollars per year. Such funds are to be raised pursuant to applicable Nebraska statutes.

In return for such compensation the party of the second part agrees to fulfill the following library functions and thus opens its facility to the party of the first part (those which are applicable are initialed by the contracting parties):

1. To provide circulation services to include book, non-book, and audio-visual collections;
2. To provide reference and bibliographic research;
3. To keep the library (bookmobile) which is located at_____ open from the hours of____to____on Monday through Friday and from the hours of____to____on Saturday and Sunday;
4. To retain a librarian to perform all reasonable library management duties;
5. To provide any other services which reasonably come within those services traditionally performed by a public library;
6. To provide such reports as the party of the first part may deem necessary and appropriate; and
7. To provide an annual audit at own expense by a certified accountant of funds allocated to the public library by the party of the first part.

The duration of this agreement is perpetual but may be terminated by either party by a____ day written notice of such termination. The _____Library (Board or Commission) is established pursuant to Chapter 51, Article 2, Reissue Revised Statutes of Nebraska, 1943.

The purpose of this agreement is to provide improved and comprehensive library services to the first part. The financing of this agreement shall be implemented through a tax collected by the party of the first pursuant to Section 51-201 Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement. A budget shall be maintained and administered by the party of the second part. Upon termination of this agreement property acquired during its existence shall be allocated to the first part in proportion to its expenditures which resulted in the acquisition of such property.

The_____Library (Board or Commission) is to be constituted according to the laws of the State of Nebraska as expressed in Section 51-202, Reissue Revised Statutes of Nebraska, 1943, as amended by LB661, 82nd Legislature, 2nd Session.

IN WITNESS WHEREOF, the_____(city, village or county) and the_____Library (Board or Commission) have caused this agreement to be executed on this_____day of 19____.

_____ Witness

_____ Party of the First Part

_____ Witness

_____ Party of the Second Part

30 Project Suggestion II related to the establishment of a county library facility. The establishment of such a facility is permissible under Chapter 51, Article 3 and Chapter 22, Article 23, Reissue Revised Statutes of Nebraska, 1943. This agreement constitutes the initial relationship between the counties entering into such a regional library concept. The Statutes provide that the library facility has to be located in a particular town within one of the counties. The location for that facility is established by the contract. There is also a provision that one of the county treasurers must have control of the library fund. In addition, the counties may levy up to two mills on the dollar of assessed valuation to provide for the library fund. This funding aspect is also dealt with in the contract. Again, we find that the duration of the contract is designed to be perpetual. However, there is a provision for termination in accordance with the Statutes. Project Suggestion III sets forth the proper termination agreement. **This particular contract should be utilized only when counties seek to establish a regional library facility.** It is not intended to be used in instances where cities or villages wish to become a part of a library program.

It is important to note that both this Project Suggestion and Project Suggestion I may be utilized somewhat simultaneously. For example, if a regional library is established and the contract establishing such a library is Project Suggestion II, and a city or village within the county or counties in which the regional library is located wish to become a part of that particular unit, the contract Project Suggestion I may then be executed between the counties comprising the regional library facility and the city or village which wishes to join and utilize the facility. Thus, we see how the project suggestions and contracts can be used to help coordinate the betterment of library facilities across the State.

Agreement Between Counties for the Establishment of a Library Facility

THIS AGREEMENT, made and executed this_____ day of_____, 19 , by and between the County of_____hereinafter referes to as the party of the first part and the County of_____ hereinafter referred to as the party of the second part is in accordance with Chapter 23, Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement. The purpose of this agreement is to provide for the establishment of a regional library, to detail services to be performed and to determine the method of financing the regional library.

TO WIT:

The parties to this contract agree to establish a county library facility at_____, _____ County Nebraska, pursuant to Section 51-302, Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement.

The County Library Board shall be constituted in accordance with Section 51-310, Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement.

The county library shall be funded in accordance with Section 51-216, Reissue Revised Statutes of Nebraska, 1943. The funds shall be in the custody of the_____County Treasurer.

The duration of this agreement is perpetual but may be terminated by either party by a_____day written notice of such termination and in accordance with Section 51-319 Reissue Revised Statutes of Nebraska, 1943.

The County Library Commission is established persuant to Section 51-310 Reissue Revised Statutes of Nebraska, 1943.

The purpose of this agreement is to provide improved and comprehensive library services for the parties to this agreement.

The funding of the county library in accordance with Section 51-316 Reissue Revised Statutes of Nebraska, 1943 shall be accomplished by the party of the first part contributing_____percent of the operating costs of the county library and the party of the second part contributing_____percent of the operating costs.

Upon termination of this agreement property acquired during its existance shall be allocated to the parties in proportion to each party's contribution which resulted in the acquisition of such property.

IN WITNESS WHEREOF, the County of_____Nebraska, and the County of_____Nebraska have caused this agreement to be executed on this_____day of_____, 19___.

_____
Party of the First Part

_____ _____
Witness Party of the Second Part

_____
Witness

Project Suggestion III is simply a termination agreement. It may be used whenever one party seeks to terminate an agreement relating to library facilities. It must be signed by an authorized agent of one of the contracting parties and delivered to the other party of the contract. The date of termination must be in compliance with the original agreement and the section thereof which relates to termination.

PROJECT SUGGESTION III

Termination Agreement

NOTICE is hereby given by _____ that pursuant to the agreement entered into on the _____ day of _____ 19__, between _____ the party of the first part and _____ the party of the second part that in accordance with such agreement and with applicable Nebraska law such agreement shall terminate and cease to be operative on the _____ day of _____, 19__. In further accord with such agreement the property acquired during and as a result of its existance is hereby caused to be distributed on (or as soon as possible thereafter) the above termination date in accordance with the allocation of property upon termination as set out in the original agreement.

Project Suggestion IV is a library use agreement between a school district and an existing library. It is made pursuant to Section 51-217 Reissue Revised Statutes of Nebraska, 1943. It is similar to the contract between a city and village and an already existing library facility. It too contains the necessary requirements set forth in the Interlocal Cooperation Act. This is necessitated because it is an agreement between political subdivisions.

Library Use Agreement With School District

THIS AGREEMENT, made and executed this_____day of _____, 19__by and between the Library (Board or Commission) of_____herein after referred to as the party of the first part and School District Number_____herein after referred to as the party of the second part is in accordance with Section 51-217, Reissue Revised Statutes of Nebraska, 1943. The purpose of this agreement is to provide for the utilization of_____Library by the party of the second part, to detail services to be performed and to establish adequate compensation for the use of such facilities.

TO WIT:

The party of the second part agrees to compensate the party of the first part in the amount of_____dollars per year.

In return for such compensation the party of the first part agrees to fulfill the following library functions and thus opens its facility to the party of the second part: (Those which are applicable are initialed by the contracting parties)

1. To provide circulation services to include book, non-book, and audio-visual collections;
2. To provide reference and bibliographic research;
3. To keep the library which is located at _____open from the hours of_____to_____on Monday through Friday and from the hours of_____to_____on Saturday Sunday.
4. To retain a librarian to perform all reasonable library management duties; and
5. To provide any other services which reasonably come within those services traditionally performed by a public library.

The duration of this agreement is perpetual but may be terminated by either party by a_____day written notice of such termination.

The purpose of this agreement is to provide improved and comprehensive library services to School District Number_____.

The financing of this agreement shall be implemented under applicable Nebraska Statutes relating to taxes to be levied by school districts.

Upon termination of this agreement property acquired during its existence shall be allocated to the parties in proportion to their expenditures which resulted in the acquisition of such property.

IN WITNESS WHEREOF, the_____Library (Board or Commission) and School District Number_____have caused this agreement to be executed on this_____day of_____, 19__.

_____
Library (Board or Commission)
School District Number_____

_____
Witness

_____
Witness

Project Suggestion V provides for an agreement between the State Library Commission and any political subdivision when Library Commision funds are being utilized. It fulfills all of the basic requirements discussed in relation to the Interlocal Cooperation Act. Those requirements which are fulfilled are: the duration of the agreement; the purpose of the agreement; the financing, establishment and maintenance of a budget; the complete or partial disposal of property upon termination of the agreement; and any other necessary matters. Many possible services are listed in the agreement which could be performed by the Library Commission. As with the previous agreements, there is a provision for the initialing of those specific services which are applicable to this contract. This project suggestion will prove to be a viable tool in the implementation of agreements between political subdivisions and the Library Commission. It fulfills all of the basic needs and requirements of such relationships both legally and legalistically.

PROJECT SUGGESTION V

Agreement for the State Library Commission and any political subdivision when Library Commission funds are being utilized

THIS AGREEMENT, made and executed this_____ day of _____, 19__, by and between the Nebraska Library Commission, hereinafter referred to as the party of the first part and_____ (this may be any political subdivision, e.g. county, city, village, school district, etc.) hereinafter referred to as the party of the second part do hereby enter into the following agreement.
TO WIT:
The party of the first part will administer the following described functions (those which are applicable are initialed by the contracting parties):

1. All circulation services to include book, non-book, and audio-visual collections.
2. Bookmobile services as suitable and required every two weeks, subject to exception by mutual agreement to schools, villages, and population centers in_____ .
3. Reference, bibliographic research, and interlibrary loan services including teletype.
4. Acceptance of charges for a telephone call for services to the library each working day from the librarians in the (towns) (counties) of_____ _____.
5. Payment of mileage at __ cents per mile for one round trip to the library by each_____ librarian in every two month period included in this agreement for purposes of consultations and liaison.
6. On site professional consultant's services to librarians in_____, in technical and other aspects of library and collection management as required and requested.
7. All services within the range of the library's facilities which are reasonably suited to the situation of the parties and consonant with the manner contemplated by the provisions of Article 2, Chapter 51, Reissue Revised Statutes of Nebraska, 1943, 1971 Supplement.

8. Provide such reports as the party of the first part and the director of the public library may deem necessary and appropriate.
9. Provide an annual audit by a certified public accountant at the expense of the party of the _____ part, of funds allocated to the party of the second part by the party of the first part for each of the _____ fiscal years of agreement.
10. The party of the first part will determine and set forth in the agreement the budget allotment to be made to the party of the second part.
11. The party of the first part will review the demonstration with the Director of _____ Library at regular intervals.

The terms of this agreement will extend for a period of fiscal year(s) _____ and _____.

The purpose of this agreement is to provide for the administration, or supervision of the administration, of the (state) plan by the state library administrative agency (the party of the first part) and provides that such party will have adequate authority under the state law to administer the (state) plan in accordance with the provisions of the Library Services and Construction Act, Public Law 597, approved June 19, 1956, as amended by Public Law 88-269, approved February 11, 1964, and as amended by Public Law 89-511, approved July 19, 1966, amended December 30, 1970, by Public Law 91-600: "It is the purpose of this Act to assist the States in the extension and improvement of public library services in areas of the States which are without such services or in which such services are inadequate, and with public library construction, and in the improvement of such other State library services as library services for physically handicapped, institutionalized, and disadvantaged persons, in strengthening State library administrative agencies, and in promoting interlibrary cooperation among all types of libraries".

This agreement is void if Federal Funds are not made available under the provisions of the Library Services and Construction Act to the party of the first part for the duration of this agreement or for the specific purpose of this agreement.

The party of the second part shall retain any property acquired under the agreement upon its partial or complete termination.

IN WITNESS WHEREOF, the Nebraska Library Commission and _____ have caused this agreement to be executed on this _____ day of _____, 19__.

_____
Nebraska Library Commission

_____
Witness

_____
Witness

Project Suggestion VI permits either the Library Commission or other libraries in the State to contract with private parties, corporations, or individuals for the performance of library services. The administrator of such library would be the contracting party and in this instance the "party of the first part".

There is a blank space in the contract which will permit a listing of those services which are to be performed. In addition, there is a space to be filled in relating to compensation and consideration for the performance of such services. An automatic renewal clause is also written into the contract with provisions for amendments and termination. The termination of this contract may be accomplished through the utilization of the termination agreement set out in Project Suggestion III. The last sentence of the termination agreement in Project Suggestion III should be deleted for the termination of a Project Suggestion VI contract. Finally, there is a provision in this contract relative to the raising of payment schedules in accordance with cost increases. Project Suggestion VI should be utilized only when a library commission or public library is contracting with private individuals, groups, or corporation. In addition, this Project Suggestion should be utilized only when ongoing services are to be contracted for and not for particular consulting services relative to a singular project. This agreement permits libraries to fulfill their statutory obligations as set out in Chapter 51, Articles 2 and 4, Reissue Revised Statutes of Nebraska, 1943, and the 1971 Supplement.

The primary advantage to a relationship which is established through the utilization of Project Suggestion VI is the libraries or the Library Commission is thereby permitted to contract for services rather than to provide them internally (example: Statewide Film Service).

PROJECT SUGGESTION VI

Agreement for the Library Commission or any library within the state and another concern interested in utilizing library services.

THIS AGREEMENT, made and executed this _____ day of _____ 19____, by and between the _____ library, hereinafter referred to as the party of the first part and _____ hereinafter referred to as the party of the second part do hereby enter into the following agreement:

TO WIT:

The party of the first part is able to perform certain library services for the party of the second part and the party of the second part desires to use such services for the consideration set out below.

The party of the first part agrees for a period of _____ year(s), commencing on _____, and ending on _____, to perform for and supply to the party of the second part the following services, as described below.

(a)

(b)

(c)

(d)

In consideration for the performance of the services described above, the party of the second part agrees to make payments to the party of the first part in the following manner:

(1) Upon the execution of this contract the party of the second part agrees to pay the party of the first part a fee of$_____ .

(2) The party of the second part agrees to pay the party of the first part $ _____ in equal monthly payments for the duration of this agreement.

This agreement may be amended by the written mutual assent of the parties involved, resulting from good faith negotiations.

This contract has a term as previously stated and shall be automatically extended for an additional term of the same duration, and be so continually extended as the following terms provide unless either party gives notice to the other at least 30 days prior to the end of the contract's duration, or any renewal term thereafter. In the event this contract is automatically extended, the fee described in subsection (1) of the consideration section of this contract shall become due and payable to the party of the first part after the commencement of the renewal term. In the event the contract is terminated, then neither party shall have any further obligation.

Except as otherwise provided in this contract, both parties shall have the obligation to perform this contract for the initial term and each renewal term thereafter. However, in the event of circumstances beyond the control of the party of the second part, such party shall have the right to cancel this agreement during the initial term or any renewal term, but only upon the condition that such party give the party of the first part at least 30 days prior written notice of its intention to terminate, together with a statement of the circumstances necessitating such termination. In the event this contract is terminated in this manner, the party of the second part will be obligated ot make payment to the party of the first part for all services incurred through the effective date of termination.

The party of the first part, because of potential increases in its costs beyond its control, retains the right to raise the amount to be paid in equal monthly payments as previously set forth, provided that such party give written notice to the party of the second part at least 60 days prior to the end of any term of its intention to raise the payments due. Thereafter, the party of the second part, unless it terminates this contract by giving the 30 day written notice prior to the end of the term, as previously provided, shall be obligated to make such payments.

IN WITNESS WHEREOF,

The party of the first part and _____ the party of the second part have caused this agreement to be executed on this_____day of _____, 19___.

_____
Party of the first part

_____
Party of the second part

_____
Witness

_____
Witness

38 Project Suggestion VII may be utilized by either the Library Commission or individual libraries in contracting with individuals or corporations for the performance of a specific service relative to a particular project. A problem that is often encountered in establishing project oriented employment relationships is that often the contracting parties are not aware of mutual expectations. This contract clearly establishes what services are to be performed and how they are to be performed.

This is accomplished by a series of four clauses relative to statements of objectives. The statement of objectives, materials, and analysis of the service which will be performed is to be submitted to the contracting library party for approval. If the objectives do not conform with the expectations of the library, the contract is void when approval of the objectives is not given within ten days of submission by the party who is to perform the service. This is a very vital area in that it relates to accountability of singular project programming. This certainly gives the library every opportunity to clearly extablish what it seeks to have accomplished as a result of a particular project, survey, or program.

PROJECT SUGGESTION VII

Agreement for the Library Commission and any library within the State and an individual or corporation for services relative to a particular project

THIS AGREEMENT, made and executed this _____ day of____ 19___, by and between the_____ Library, hereinafter referred to as the party of the first part and_____ hereinafter referred to as the party of the second part do hereby enter into the following agreement:

TO WIT:

The party of the second part is able to perform certain services for the party of the first part and the party of the first part desires to retain such services for consideration set out below: :

The party of the second part agrees to perform the following services by the_____ day of_____, 19___. (It will be necessary in this part of the contract to detail those services which will be performed.)

Before the consideration is to be paid the party of the second part must submit to the party of the first part the following materials and analysis of the service which he will perform for the approval of such party:

(1) A statement of measurable objectives or symbols describing one of the library intents to be accomplished;

(2) An objective which will communicate the intent to the degree described and what the library patron will be doing as a result of using the library and how the party of the second part knows when he is doing it;

(3) To describe the intended activities (what the patron will be doing at the library):

  (a) Identify and name the person for whom the service is intended.

  (b) Define the important conditions under which the service is to occur.

  (c) Define the date and criterion of acceptance performance.

(4) Write a separate statement for each objective.

This contract shall be void unless the party of the first part approves in writing the material and analysis outlined above which is submitted by the party of the second part within ten days of its submission.

In consideration of the foregoing services, the party of the first part agrees to make payments to the party of the second part in the following manner:

(1) Upon the execution of this contract and the approval of the materials and analysis as previously set forth, the party of the first part agrees to pay the party of the second part a fee of $____.

(2) The party of the first part agrees to pay the party of the second part $_____in equal (monthly, weekly, etc.) payments for the duration of this agreement.

This agreement may be amended by the written mutual assent of the parties involved, resulting from good faith negotiations.

IN WITNESS WHEREOF, _____ the party of the first part and_____ the party of the second part have caused this agreement to be executed on this_____ day of_____, 19_____.

_____
Party of the First Part

_____
Party of the Second Part

_____
Witness

_____
Witness

40 Project Suggestion VIII is a librarian employment contract. It is simply a more detailed general employment contract. It establishes certain duties that shall be performed by a librarian pursuant to general Nebraska Statutes.

If the contract is simply between a village, a municipality, or lesser political subdivision than a county, the duties detailed in the first paragraph after "to wit" will be sufficient.

The amount of salary and duration of the contract is left open to negotiation between the contracting parties.

Librarian Employment Contract

THIS AGREEMENT, made and executed this _____ day of _____ 19___, by and between the _____ (may be any political subdivision or library board), hereinafter referred to as the party of the first part, and _____ (prospective librarian) hereinafter referred to as the party of the second part do hereby enter into the following agreement:

TO WIT:

The party of the first part desires to employ the party of the second part to perform the services of a librarian which shall include but not be limited to the build up and management, according to accepted principles of library management, a library for the use of the people of _____ and to determine what books and other library equipment shall be purchased.

The party of the second part shall be paid $_____ per year to be paid in twelve equal monthly payments by the party of the first part in consideration for the performance of the beforementioned services.

This greeement shall be in full force and take effect from the day of _____, 19___, to the _____ day of _____, 19___.

This agreement may be amended by the mutual written consent of the parties.

IN WITNESS WHEREOF, the _____, party of the first part and _____, party of the second part have caused this agreement to be executed on this _____ day of _____, 19___.

_____
Party of the First Part

_____
Party of the Second Part

_____
Witness

_____
Witness

Project Suggestion IX is a general employment contract and may be utilized whenever a library decides to employ an individual on a contractual basis. It is necessary for the library to determine what specific duties shall be performed by the prospective employee and insert them in the applicable section of the contract. Again, we find that the compensation and duration of the contract are to be left to the negotiation of the parties.

The utilization of this type of a contract will solidify tenuous employment agreements. It will add to the stability of both the employer and the employee in that a definite relationship can be established relative to the performance of specific duties. You will note that the list of duties which are to be performed is not an inclusive one. There certainly is room for leeway in this project suggestion. However, it does fulfill the basic needs of establishing a written contract between an employer and an employee.

General Employment Contract

THIS AGREEMENT, made and executed this _____ day of _____ 19___, by and between the _____ hereinafter referred to as the party of the first part, and _____ hereinafter referred to as the party of the second part do hereby enter into the following agreement:

TO WIT:

The party of the first part desires to employ the party of the second part to perform the following services:

(a) (A list of those specific
(b) services which are to
(c) be performed should be set out)

The above list is not inclusive and the party of the second part may be required by the party of the first part to perform any service related to the area of _____. In consideration for the performance of the foregoing services the party of the first part agrees to pay the party of the second part $_____ per year to be paid in twelve equal monthly payments.

This agreement shall be in full force and take effect from the _____ day of _____, 19___ to the _____ day of _____, 19___.

This agreement may be amended by the mutual written consent of the parties.

IN WITNESS WHEREOF, the _____, party of the first part and _____, party of the second part have caused this agreement to be executed on this _____ day of _____, 19_____.

_____
Party of the First Part

_____
Party of the Second Part

_____
Witness

_____
Witness

ARTICLE 22
INTERLOCAL COOPERATION ACT

Section.

23-2201. Interlocal Cooperation Act; declaration of purpose.
23-2202. Interlocal Cooperation Act; citation of act.
23-2203. Interlocal Cooperation Act; definition of terms.
23-2204. Interlocal Cooperation Act; public agency; powers; agreements.
23-2205. Interlocal Cooperation Act; public agency; submission of agreements for approval, when.
23-2206. Interlocal Cooperation Act; public agency; appropriation of funds; supply personnel.
23-2207. Interlocal Cooperation Act; public agency; contracts with other agencies; authorization; contents.

23-2201. Interlocal Cooperation Act; declaration of purpose. It is the purpose of sections 23-2201 to 23-2207 to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.
Source: Laws 1963, c. 33, § 2, p. 1071, Effective date June 20, 1963.

23-2202. Interlocal Cooperation Act; citation of act. Sections 23-2201 to 23-2207 may be cited as the Interlocal Cooperation Act.
Source: Laws 1963, c. 333, § 3, p. 1071, Effective date June 20, 1963.

23-2203. Interlocal Cooperation Act; definition of terms. (1) For the purposes of sections 23-2201 to 23-2207, the term public agency shall mean any county, city, village school district or any agency of the state government or of the United States, any drainage district, sanitary and improvement district or any other municipal corporation or political subdivision of this state; and any adjacent political subdivision of another state.

(2) The term state shall mean a state of the United States and the District of Columbia.
Source: Laws 1971, LB 874, § 1. Effective date August 27, 1971.

23-2204. Interlocal Cooperation Act; public agency; powers; agreements. (1) any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by sections 23-2201 to 23-2207 upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of sections 23-2201 to 23-2207. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition, and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to sections 23-2201 to 23-2207 shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, which performance may be offered in satisfaction of the obligation or responsibility.

Source: Laws 1963, c. 33, § 4, p. 1072, Effective date June 20, 1963.

23-2205. Interlocal Cooperation Act; public agency; submission of agreements for approval, when, in the event that an agreement made pursuant to sections 23-2201 to 23-2207 shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction; *Provided,* no agreement under sections 23-2201 to 23-2207 shall provide for generation, transmission or distribution of electricity.
Source: Laws 1963, c. 333, § 5, p. 1073, Effective date June 20, 1963.

23-2206. Interlocal Cooperation Act; public agency; appropriation of funds; supply personnel. Any public agency entering into an agreement pursuant to sections 23-2201 to 23-2207 may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.
Source: Laws 1963, c. 333, § 6, p. 1073, Effective date June 20, 1963.

23-2207. Interlocal Cooperation Act; public agency; contracts with other agencies; authorization; contents. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; *Provided,* that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.
Source: Laws 1963, c. 333, § 7, p. 1074, Effective date June 20, 1963.

Walter H. Radcliffe is a senior law student at the University of Nebraska. He has clerked for a law firm for three years. In addition, he has served as Research Counsel for the Judiciary Committee, as a Legislative Assistant for the Nebraska Drug Commission, and as a Legislative Liaison for the Nebraska Crime Commission. He is the Executive Vice President of the Bureau of Nebraska Affairs and has published a book entitled **An Analysis of Nebraska School Laws--An Annotated Index.** He plans to practice law in LIncoln, Nebraska, and continue work in governmental affairs as well as doing some writing.

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